DECLARATION OF KEVIN McNALLY REGARDING JURY CONSULTANTS

1. I currently serve as the Director of the Federal Death Penalty Resource Counsel Project, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal courts. I have served as Resource Counsel since the inception of the Resource Counsel Project in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Office of Defender Services of the Administrative Office of the United States Courts.

2. My responsibilities as federal resource counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort includes the collection of data on the initiation and prosecution of federal capital cases.¹

¹The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (May, 1998), at 28-30. www.uscourts.gov/dpenalty/1COVER.htm. The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases ....” Id. at 50. A recent update to the Report stated: “Many judges and defense counsel spoke with appreciation and admiration about the work of Resource Counsel. Judges emphasized their assistance in recruiting and recommending counsel for appointments and their availability to consult on matters relating to the defense, including case budgeting. Defense counsel found their knowledge, national perspective, and case-specific assistance invaluable.” http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/Publications/UpdateFederalDeathPenaltyCases.aspx
3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information about these cases. I accomplish this by internet news searches, by reviewing dockets and by downloading and obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, and by telephonic or in-person interviews with defense counsel or consultation with chambers. This information is regularly updated and is checked for accuracy by consulting with defense counsel. The Project’s information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.

4. Federal courts have appointed jury experts on numerous occasions pursuant to 18 U.S.C. § 3006(A) in non-capital cases.²

5. Additionally, jury experts have been authorized in numerous federal capital cases.³

In United States v. Billy Joe Lyon (W.D. KY No. 4:99 CR - 11- M) the Court approved the hiring of paralegal services to be used prior to trial and during the jury selection process. Federal public

7. Jury selection experts have been appointed in numerous state capital prosecutions. *See, e.g.*, *State v. Cruz* (Maricopa County Inf. No. 120721). The leading case authorizing appointment of a jury selection expert is *Corenevsky v. Superior Court*, 204 Cal.Rptr. 165 (Cal. 1984). The trial court permitted $8,740.00 for a jury selection expert in a non-capital murder case. In a pre-trial writ, the appellate court determined that this was within the discretion of the trial court. 204 Cal.Rptr at 173. Additionally, in *State v. Anaya*, 438 A.2d 892, 894-895 (Me. 1981), the Court reversed when a timely request for "appointment of two experts in the fields of statistics and demography to aid ... in analyzing the composition of the grand jury array" was
denied.


9. The information detailed herein is maintained in the ordinary course of business of the Federal Death Penalty Resource Counsel Project, was not prepared in anticipation of its being used in litigation, and is accurate to the best of my knowledge, ability and belief.

I declare under the penalty of perjury under the laws of the United States of American, 28 U.S.C. §1746, that the foregoing is true and correct. Executed this 16th day of January, 2012.

/s/ Kevin McNally
Kevin McNally